Central Law Journal.

ST. LOUIS, MO., JULY 2, 1909.

ANNOUNCEMENT.

We are sure that the friends of the Central Law Journal will be pleased to learn that we have succeeded in securing the services of Judge Needham C. Collier as our editor-in-chief. Judge Collier began the practice of law in his native state, Georgia, but was afterwards appointed Judge of the Supreme Court of New Mexico, by President Cleveland. He subsequently removed to St. Louis to engage in the practice of law. Our subscribers who have sent us so many flattering testimonials concerning Judge Collier's annotations of leading cases will, above all others, we are sure, be gratified to learn that the Central Law Journal will, beginning with this new volume, have the benefit of Mr. Collier's entire time and services.

Mr. Alexander H. Robbins, the former editor-in-chief, will still continue as managing editor. Thus will be presented the unusual spectacle of a law journal demanding the entire time and services of two comparatively well-known legal writers. Surely this endeavor on the part of the management to make the Central Law Journal the *most useful* periodical in the United States to the practicing lawyer should receive the practical encouragement of the bar. Our only request is that you address a good word for the Journal to your friends among the members of the bar in your community.

ALEXANDER H. ROBBINS,
Managing Editor.

REMOVABILITY OF CAUSES TO AND JURISDICTION IN FEDERAL COURTS—THE NON-SEPARABLE CONTROVERSY THEORY DISTINGUISHED.

The practice of avoiding removal to federal courts by joining employees of foreign corporations as codefendants has been held by the federal supreme court ineffective as applied to a corporation created by act of congress. See Matter of Dunn, 29 Sup. Ct. 299.

The contention was often made as to such joinders that they were not in good faith, but solely for the purpose of avoiding federal jurisdiction. Where the corporation is a federal corporation, an action against it is held to be a suit arising under federal law, and intent in such joinder not material.

The court in the Dunn case, after taking as a premise that "the right to remove, under the statute depends upon whether the suit could originally have been brought in the circuit court of the United States," goes on as follows: "The question, then, is whether the United States circuit court for the proper district would have had jurisdiction of a suit commenced in that district by the plaintiffs against the railway company (a federal corporation) and the two individual defendants. A suit against the company would, as we have seen, be one arising under the constitution or laws of the United States, and as the individual defendants resided in the same state as plaintiffs, the ground of jurisdiction as to them must be that, by joining all as defendants in a joint action for the same wrong done by all of them, the plaintiffs thereby made the suit against the individual defendants also one which arises under the constitution and laws of the United States."

Here the court concedes, in effect, that, if this contention is not sound, the jurisdiction must fail, where there is no separable controversy. And it looks like creating a sort of constructive jurisdiction to hold the contention to be sound. The court

gets to the matter in the following way: "The plaintiffs themselves have made the act of which they complain a joint one, and being one which arises under the constitution and laws of the United States as to one of the defendants, it becomes so as to all, because it is joint. The federal character permeates the whole case, including the individual defendants as well as the corporation. The case which plaintiffs make in their petition in the writ must determine the character of the cause of the action."

This reasoning to us seems specious. Underlying the principle "the federal character permeates the whole case" is the false application of federal paramountcy. A state court is the ordinary and generally appropriate jurisdiction for rights and remedies in civil matters, whether actions therefor arise out of the constitution and laws of the United States or out of state law. It is but an accidental circumstance which gives jurisdiction in such things to a federal court. This is clear in jurisdiction based on diversity of citizenship. It logically arises out of the indisputable principle that state jurisdiction exists as to a suit based on federal law, unless the statute otherwise provides.

Therefore, it ought to be said, that state character "permeates the whole case," and is not dissipable by federal character. It is "the leaven that leaveneth the whole mass." Federal character is like a barnacle on the surface, and this could not be better illustrated than by the Dunn case, to-wit: federal jurisdiction based on the fact that one of the defendants was incorporated by act of congress.

This is purely an incident which does not touch in the most remote way the merits of the controversy. And yet it seems a typical circumstance.

Mr. Justice Harlan dissented, and it is greatly to be regretted that the reasons for his dissent were not given.

As the only reason for taking causes of this kind away from the ordinary jurisdiction is to secure impartiality, and as the presumption exists that one defendant of several, who is a resident of the state, will not be discriminated against, a non-resident jointly charged with him would not be harmed.

Also, as no jurisdiction whatever exists in a federal circuit court, except as specifically granted by statute, the sharing of jurisdiction with the state court should only be to the extent expressly provided for. We must confess that the distinction of non-necessity of a separable controversy here and its necessity in diversity of citizenship cases is to us an excessive refinement and of the sort that tends to eat away the natural jurisdiction of state courts. It makes federal jurisdiction swallow up state jurisdiction, while the reverse ought to be the true theory.

To carry the two resident defendants over to the federal court gets them into an extraordinary jurisdiction. To leave the federal corporation in the state court is to leave it in the ordinary jurisdiction. Its privilege cuts into, or destroys its codefendants' right—abolishes their venue, when the status of all the defendants is the same in the ordinary jurisdiction.

If complaint has been made that joinders of individuals with foreign corporations were merely to avoid federal jurisdiction, conversely it might be claimed that joinder of a federal corporation was to avoid state jurisdiction. In such event it would be seen, that the federal creature had superior right to the federal citizen.

It is undoubtedly right to enforce federal supremacy in the natural, necessary federal sphere. It seems all wrong to limit state sphere where federal jurisdiction is merely concurrent, because in such case the state sphere is the natural sphere.

Very recently a suit based on the federal employers' liability act was remanded by the circuit court of the United States for the Northern District of Georgia to the state court, on the ground that from the plaintiff's declaration it did not appear that the *construction* of that act was involved.

We will discuss, in our next number, that ruling in the light of the Dunn case.

NOTES OF IMPORTANT DECISIONS.

REMOVAL OF CAUSES—REMOVABILITY BASED UPON JURISDICTIONAL VENUE.—The Federal Supreme Court says: "It is well settled that no cause can be removed from the state court to the Circuit Court of the United States unless it could originally have been brought in the latter court." Re Winn, 29 Sup. Ct. 516, citing Copper & S. Co. v. Ore Purchasing Co., 188 U. S. 632, 640, 47 L. Ed. 626; Ex parte Wisner, 203 U. S. 449, 51 L. Ed. 264.

This is an exceedingly terse and unambiguous statement, and yet how far short it falls of the spirit and purpose of the federal constitution in authorizing congress to provide for original jurisdiction and its consequent jurisdiction by removal, is strikingly seen in the Winn case. The judges said at an early day that the purpose of providing for this casual jurisdiction was simply to secure the same impartiality for aliens and non-residents as for residents.

The Winn case shows that the claim of jurisdiction "was not based upon diversity of citizenship (both parties being non-residents of the state) but upon the ground that the suit was one arising under the laws of the United States."

"The petition for removal," says the court, "shows affirmatively that the case was not one arising under the laws of the United States. In substance the allegations for removal are that the defendant was subject to the federal laws to regulate commerce and that under those laws the defendant had a defense in whole or in part to the cause of action stated in the declaration."

"But," continues the court, "the cause of action itself is not based upon the interstate commerce law or upon any other law of the United States. The case could not have been brought originally in the Circuit Court of the United States and was therefore not removable thereto. In holding otherwise we think the learned judge of the circuit court erred."

The Supreme Court granted a writ of mandamus sending cause back to state court.

This purely artificial jurisdiction of the federal circuit courts under a constitutional provision, merely designed to secure against a possible partial administration of law, which provision is not self-executing, shows that it works in a way as to extend to things where no possible partiality could arise, and it omits some situations more capable of partiality than those embraced. The country would be generally better, if the entire brood of these statutes were wiped out of existence, for this country has reached that condition where it is ridiculous to charge that state courts will not mete out to an alien the same measure of justice they give to a citizen and a resident.

But if they would not, it seems ridiculous to keep a law for impartiality in our legislation, which merely secures it as to a cause stated in plaintiff's pleadings and not as to defendant's special defenses.

THE FALLACIES OF RATE LEGISLATION.

The sovereign state owes to the people of a country the duty of performing public work or service without discrimination. This is never doubted when work or service concerning the public character of which there has been no general aberration of thought is in question. The maintaining of the institutions of government, the system of common education, assistance in or protection against wide-spread calamities, the maintenance of an adequate army and navy, postal facilities, signal service, river, harbor and coast improvement, and many other public services are easily understood by everybody to be for indiscriminate use and good—to be had without price except the bearing of the individual's due proportion of the burden and expense of running the government. There are many other duties of the state, some of which from earliest times, and others latterly, have been delegated by the sovereign; some to cities and then by the cities to corporations thereunto deputized, or authorized and empowered, and others directly to such corporations. From this it has usually been assumed that the operations were private enterprises, and it has tended to clothe these functions in a false garb. Their original character, however, has not been and, indeed, could not have been changed. Never in the history of this country has there been so much wild, ill-timed clamor as now for legislative regulation of the forces at work, which, if proper legal analyses and deductions were made, would be found quite outside of the legislative pale. The federal congress spent

nearly a whole expensive session and many of the states in the union have been busy in attempts to fix maximum freight rates. In city charters legislatures have authorized the fixing of rates of compensation and hire for municipal public service corporations, and ordinances, many, have been passed, full of restrictions and limitations. Local and state elections have been won and national reputations made by the advocacy of rate-making and regulation which cannot stand the test of law and reason. Courts have floundered in a sea of statutes, ordinances, commission orders, regulations, called administrative, and their own precedents and decisions, and real relief is farther away than when it all began.

There is no doubt of the sovereign's power to delegate these duties due the people to municipalities or, directly, to service corporations. Nor should it be doubted that in many instances this is quite necessary and proper. But this is always done with the proviso, expressed or implied, that the service shall be performed without discrimination and that all compensation for the work performed shall be restricted to a reasonable rate. The character of the service itself, (its public character) precludes the idea of discrimination beyond legislative interference or judicial encroachment. The proposition that the rates shall be reasonable is so general and the conditions of its application so mutable that it should be at once apparent that neither legislature, court nor commission (assumed to have the attributes and powers of both legislature and court), can fix the same in advance. That charge is usually considered reasonable which secures a fair rate of interest or income on the money necessarily invested in and fair pay or salary for the operators of the facility. Considered as a method of performing its duties to the people this seems but a cumbersome way for the sovereign to borrow money and pay salaries to its functionaries, and besides, how inexact. If the other duties of the sovereign state were thus farmed out or financed, what ridicule and vociferous and riotous objection would we not hear? Furthermore, in many cases, the funds on which this interest is to be computed was raised by donation by the very public to whom the service was already due—by the bonding process.

The federal "Rate Bill," in the first place, does not purport to make or fix any kind of rates. It authorizes public carriers to adopt and publish a schedule of rates, then submits this to a commission as to its reasonableness and then the unreasonableness of the whole thing is left to the determination of the courts. In the second place, if we consider the entire scheme of operation as the fixing of a rate, then it is so roundabout as to be wholly useless in practice to reach the ends claimed to be its object. But apart from all this, it is a futility for the same reasons that all attempted rate legislation proves futile. The supreme court of the United States, in Interstate Commerce Commission v. Cincinnati, N. O. & T. P. R. Co.[1]—"The Maximum Rate Case," states that, "congress might itself prescribe rates; or it might commit to some subordinate tribunal this duty; or it might leave with the *companies* the right to fix rates, subject to regulation and restriction, as well as to that rule which is as old as the existence of common carriers, to-wit: *that rates must be reasonable.*" It seems that even a cursory examination would develop that the last clause, "that rates must be reasonable," effectually neutralizes all the others in this statement. When brought to test in a proper case the *reasonableness* of the rate controls. Now if it is one made in advance, as a scale for future operation, whether by congress, by subordinate tribunal, or by the service corporation itself, it must always stand or fall accordingly as it is reasonable or unreasonable under the circumstances of the given case. Manifestly, it cannot become a fixity even after it has been so tested, and either sustained, or as modified, for future operations. To first fix the rate, even for the time being, would require information the obtaining of which is not at all provided for in the rate bill. Among other things there is that covered by an

(1) 167 U. S. 479.

amendment proposed, which was lost, viz.: "To investigate and ascertain the fair value of the property of every railroad engaged in interstate commerce," and their value in the different states and territories, and as a whole, and providing for means and methods of procedure to conveniently attain these ends. It would require knowledge of the cost of material and labor in the operation, capital invested and a host of other legislature fixes a rate the same may become either excessive or deficient in a comparatively short time. In this same decision the court invalidates the former rate bill—the interstate commerce act of 1887—on the expressed ground that the making of rates for the future is a legislative function, and that the commission which had assumed the authority to prescribe rates, being a judicial body, could not lawfully exercise such functions, and had exceeded its powers. In the present rate-bill—amendment of the old interstate commerce acts—this objection, shown by the Maximum Rate Case decision, is sought to be obviated by conferring on the new commission a dual power, both legislative and judicial, a combination, by the way, out of harmony with the spirit of our institutions, which in their very inception and throughout have been strongly influenced by the doctrines of Montesquieu as to the separate departments of government. "All writers on constitutional law are agreed that the functions of the three departments (of government) should be kept as distinct and separate as possible." So says the supreme court of Kansas in its own rate case.[2]

But even if this were otherwise proper, the double power so conferred will not mend the difficulty. The new commission has no greater power with respect to fixing rates for the future than that which had theretofore been delegated to similar bodies by different states, none of which ever succeeded in practically prescribing or fixing future rates. The court sets out portions of the statutes of fourteen states, Alabama, California, Florida, Georgia, Illinois, Iowa, Minnesota, Mississippi, New Hampshire, North Dakota, South Carolina, Kansas, Kentucky, New York, Vermont and Nebraska. In every one of these rate statutes the proposition of reasonableness of its own force is a controlling one, besides, is distinctly expressed in the statutes as a restriction. True, the power to make and fix a rate is always conferred, in terms, upon the various commissions and boards, but as in the case of the supreme court's statement, above quoted, it is recognized that only reasonable rates can be charged anyway, so nullifying all the rest of the provisions for fixing any rates in advance. If the rate so fixed is, or by changed conditions becomes unreasonable, the rate stated is null. If such rate is found reasonable, in any case involving it, what use that any statute, commission or body should have fixed it? The charge in a given case, to be upheld, must not have been more nor less than reasonable. The final arbiter, whether the case arises under a fixed rate, or upon a charge made without regard to such a rate, must always be the court before which the parties bring their controversy, and then the decision cannot become a fixed rule for future conduct. Future operations are always governable by the proposition of reasonableness, sufficient without amplification by statutory or judicial pronouncements. As stated by the supreme court in the Maximum Rate Case, the old commerce commission, considered as a judicial body, could not fix a future rate, that being a legislative function. The final determination under the new rate bill being necessarily in the courts,—surely without legislative attributes—how can a rate become fixed under this bill for future operations?

The question of the reasonableness of a given charge, considered in the courts in a proper case, is always affected by the earning capacity of the operation, fair compensation for the work of the men engaged and kindred considerations. If anything additional is exacted, as for the gain of the service corporation, stock and bond-holders of the enterprise, this results in making the people pay for what is already of right their own. In other words: the people can

(2) State v. Johnson, 61 Kan. 803.

justly be required to pay only an equivalent of what would be their proportion of the governmental burden, if the sovereign had not delegated the function. Every dollar made by the men in these service corporations, beyond what would be the government expense for interest on funds sufficient to carry on these things and performing its duties itself, and wages or salaries to the men as its officers, agents, and servants, is so much money taken from the people for nothing, for as stated at the outset, the sovereign owes them this service without pay.

There have been numerous cases involving, in some form or other, the rights and obligations of municipal public service corporations, operating under limitations as to rates of compensation or hire, purporting to be fixed either by state legislation, ordinances or accepted franchises. In so far as municipal corporations deal with matters touching public service at all, they must act within the limits of their charter powers, as a delegate of the legislative branch of the state, and not as autonomous bodies. American cities differ from some other modern as well as from some mediaeval and most ancient cities. In our cities, while the people have in large measure the right and privilege of local self-government, yet the municipal body politic itself has no independent powers whatever. Many mediaeval and most ancient cities were strictly autonomous. Rome was in itself a sovereignty, having at one time nearly all the rest of the world in dependence. "Notwithstanding," says Grote, "the people of Greece were of a common blood, language and religion, Greece was never politically united. Political power resided, not in a number of independent states, but in a large number of free, independent and autonomous cities, with districts of country adjoining or attached to them. Each city, except in Attica, was sovereign; was the sole source of supreme authority and possessed the exclusive management of its own affairs." Such sovereignties as Florence, Venice, and Naples, the cantons of Switzerland, and the free cities of Germany, were far less circumscribed in their municipal concerns than American cities are. The validity of franchises in American cities must always first be tested by the scope of the delegated charter powers. Within these limits the relations between public service corporations in cities and the people are no different from that existing between any other public functionary and the people. The rates fixed by ordinance, or under accepted franchises, are just as subservient to the restriction as to reasonableness as when the same are attempted to be fixed by state or federal statutes.

Little can be said about the decisions of the courts in regard to the rights and duties of corporations under accepted municipal franchises, where, by statutory enactment, or ordinances in pursuance thereof, or by provision of the franchise ordinance itself, there are limitations as to rates, except that there is not much harmony in the reasoning and doctrines of these decisions. They proceed in the main upon the idea that the franchise ordinance and its acceptance by the public service corporation constitute a simple contract.[3] And in construing the effect of such supposed contracts, some courts enforce specifically their terms, as in the case of other mere private contracts,[4] while others, holding to the contract notion, illogically mix in the public concerns, and refuse to enforce such contract provisions against the corporation, because, forsooth, this would run counter to the original purpose and object in making the contract (public service), by bankrupting the corporation, and so rendering all service by it impossible.[5]

Specific performance is an arm of equity, and is essentially a remedy between private parties by which contracts are enforced where the equities permit. Public duties are always law-imposed. The enforce-

(3) Mahan v. Michigan Telephone Co., 93 N. W. 630; Southern Railway Co. v. Franklin & P. R. R. Co., 44 L. R. A. 297; Nebraska Telephone Co. v. State, 76 N. W. 171.

(4) Brownell v. Old Colony R. Co., 29 L. R. A. 169, and cases last cited.

(5) Maryland Telephone & Telegraph Co. v. Simons Sons' Co., 63 Atl. 314.

ment of legal duties is not within the province of courts of equity. "Equity is the correction of that wherein the law by reason of its universality is deficient." The duty to furnish public service is absolute. How can the law be said to be *deficient* in reference to the enforcement of duties which the law itself absolutely imposes?

In State of Washington ex. rel. Grinsfelder v. Spokane Street Railway Co.[6] and San Antonio Street Railway Company v. State ex. rel. Elmendorf,[7] and Canal Company v. Schuman,[8] the public service corporations were compelled by mandamus to perform their respectively delegated duties, notwithstanding the fact of financial incapacity shown, and a plea that performance would result in bankruptcy. The service was still in operation in these cases as to part of the public, and so was discriminatory. In State of Kansas ex. rel. Little v. Dodge City, Montezuma & Trinidad Ry Co.,[9] and City of Benton Harbor v. St. Joseph and Benton Harbor Street Railway Company,[10] the courts refused the writ of mandamus because it was considered futile to make the order. In the Kansas case the company was wholly out of operation, and had no funds, and so there was no discrimination. In the Michigan case the omission was of a matter collateral merely, to the duty, viz.: paving between the rails. The company had no funds, and there was no discrimination.

In People ex. rel. Jackson v. Suburban Railway Co.,[11] the court appears to recognize the correct principle. In the opinion it says: "The fact that the ordinance required the company to formally accept it as a condition had no effect to render the grant a mere private contract. The state, through the village as its representative was acting, and the power which was exercised by the village was that of the *sovereign*. That which the ordinance required the company should do and should consent to do did not become mere contract obligations on the part of the company to perform acts beneficial to the village. The village as a corporate entity, had no interest whatever in the acts to be performed. Compliance with the ordinance in the respect under consideration was not beneficial to the village in its corporate capacity, but was a duty to the *public*, to be performed by the company for the benefit of the public. There is nothing in the nature of that duty rendering it impracticable to enforce the performance of it by writ of mandamus."

And so the supreme court of New Jersey, in the case of State ex. rel. Bridgeton & Millville Traction Company,[12] says: "An implied condition attaches itself to the grant of the franchise, that it be held for public benefit; and the duty upon the railway company is to exercise it for such purpose; and, as a *public agent*, it cannot escape this duty. * * * * Mandamus is the proper remedy to compel such street railway company to perform the duties of maintaining and operating such railway company for the benefit of the public. The public duty imposed upon the company is always active, potential and imperative, and must be executed until lawfully surrendered, suspended or abandoned, by the legally expressed *consent of the state.*"

In some of the above cases the reason for the failure to perform was the inadequacy of the compensation rate attempted to be fixed by the ordinances, or otherwise, and proof was directed to the fact that at the rates specified the service would bankrupt the corporation. Much of the difficulty which the courts encountered in these cases was by reason of the erroneous assumption on the part of both parties and courts that the rate once fixed must so remain because the parties had *contracted* for such rate or legislation had so fixed it; losing sight of the ever-present principle that the rate must be reasonable, no more no less; that the duty is absolute and its performance without discrimination can be required and en-

(6) 41 L. R. A. 515.
(7) (Tex.), 38 S. W. 54.
(8) (Ga.), 17 S. E. 938.
(9) 53 Kan. 328.
(10) (Mich.), 60 N. W. 758.
(11) (Ill.), 49 L. R. A. 650.
(12) 45 L. R. A. 837.

forced by legal remedies, but that the compensation rate must vary according to what the conditions make reasonable.

In the case of Texas Pacific Railway Company v. Mugg & Dryden,[13] the supreme court speaks of the "regular rate." This is intended to mean the schedule of rates and tariffs filed with the commerce commission by the carrier The case holds a special agreement for a reduced rate void because in conflict with the "regular rate." There is nothing wrong with the conclusion, except, perhaps, that the real reason should have been stated, viz.: that any special agreement for public service at less than the usual reasonable rate was discriminatory, and for that reason unlawful and void.

The questions narrow themselves down to this: What would the sovereign state itself do in the performance of such duty? Having no purpose to profit, always just, it would furnish the service without discrimination at that reasonable rate which would nearest realize the idea of actual cost. Should the sovereign's delegate, the municipality or public service corporation, or sub-agency—the municipal public service corporation, have privileges and perquisites greater than its principal—its source of right and power? It need only be borne in mind that the service is really rendered by the sovereign from whom it was originally due, through agencies thereunto empowered, and the matter becomes greatly simplified. If the corporations will not and do not perform these services for the equivalent of the salaries of officers or agents, and the usable value of the funds practically supplied by them for these public governmental purposes, then injustice to the people and citizens results, for they are entitled to have the service from the sovereign free of charge, except their proportion of governmental support to the extent of the cost. If these corporations will not be satisfied with such compensation of a functionary, then the function should be performed without delegation to them, by the sovereign itself, in the usual manner of performing government functions. It must be added that if the theory of public service by corporations were carried out, and indiscriminate service at that reasonable rate always contemplated could be and actually were furnished, there would be no ground for objecting to present conditions. But the machinery of the law is too sluggish and inefficient in practice to bring about this just result. What then? The sovereign must take up its own work and duty. So-called governmental control has proved and will continue to prove abortive. Public operation of public utilities and functions is the natural state, and the only one which gives a just and equitable service.

The rate or charge, fixed or left unfixed, will always be either too high or too low. For many reasons there is no natural regulation by healthy competition. A slight variation, in view of the vastness of the field of operation, makes a world of difference. It has become a political maxim that, "where there must be monopoly, it should be public." All public operation is monopoly, or sooner or later will become so. If the rate is too low—that is, beneath what is above considered as proper—it will bankrupt the service corporation. If it is too high it may bankrupt the people to whom the service is a necessity. Where public service is furnished directly by the state, if the rate or charge—direct tax, like postage and revenue stamps—is either too high or too low, this is equalized by corresponding reduction or increase in other taxation or revenue collection. The whole scheme of government collection and expenditure, in the main, readily finds a natural and just equilibrium. In the system of exploitation of public utilities and necessities, for private gain, is where the injustice lies.

M. C. FREERKS.

Wichita, Kansas.

(13) 202 U. S. 242.

RAILROAD'S USE OF ONE'S OWN PROPERTY—DAMNUM ABSQUE INJURIA.

LOUISVILLE & N. R. CO. v. SCRUGGS & ECHOLS.

Supreme Court of Alabama, April 6, 1909.

A freight train in the regular course of its operation was stopped near the railroad company's office without any knowledge on the part of the company or its servants that by stopping at that point they were preventing the fire department from throwing water from a hydrant on plaintiff's building that was on fire on the other side of the track, and the train was moved immediately on the receipt by the conductor of a clearance card from the train dispatcher. Held, that defendant was not liable for damages caused by the failure of the fire department to reach plaintiff's building with water.

DOWDELL, C. J.: This case was tried by the court without the intervention of a jury, and judgment was rendered for the plaintiffs. From this judgment the defendant appeals, and here assigns its rendition as error.

But one question is argued and presented for our consideration, and that is whether there was a duty owing from the defendant to the plaintiffs, under the facts, for a violation of which the plaintiffs have a cause of action. There is no pretense that the defendant was in any way connected with the origin of the fire which destroyed the plaintiffs' property. The undisputed evidence is that, when the defendant's servants moved the locomotive and train of 24 freight cars, from the company's yards to the point intervening between the hydrant or water plug, and the plaintiffs' property that was on fire, it was without any knowledge or notice on the part of the defendant or of its servants of any purpose or intention of the fire department, or of any one else, of laying a hose across the defendant's track, from said water plug to the plaintiffs' property. The movement of the train of cars was in the orderly course of the defendant's business. The place at which the train of cars was stopped, near the dispatcher's office, was its customary and usual place for stopping to receive orders and clearance card from the dispatcher before it could proceed over what was termed the "block"—indicating, in this case, a certain section of railroad used in common by the defendant company and the Southern Railway Company—on its journey to Nashville, the place of its destination. The evidence as to the length of time the train remained stationary varies from 5 to "15 or 20" minutes; but we think this unimportant, as the evidence is without dispute that the train moved on its journey over the block, immediately upon the receipt by the conductor, who had control of its movements, of the clearance card from the dispatcher. Thus it is seen that the defendant company was in the rightful use of its property, in the ordinary and usual course of business. It was guilty of no negligence, in the exercise of its rights, resulting in injury to the plaintiffs' property. In the legitimate use of its own tracks, in the orderly course of business, the defendant, under the evidence in this case, was not by law charged with the duty to move its train of cars otherwise than according to its own rules and regulations.

We fully recognize the principle of law expressed in the maxim, "Sic utere tuo ut alienum non laedas;" but this principle finds no application under the facts of this case. We find the doctrine applicable here well stated in Cooley on Torts (1st Ed.), p. 81, where it is said: "It is 'damnum absque injuria' also if through the lawful and proper exercise by one man of his own rights a damage results to another, even though he might have anticipated the result and avoided it. That which it is right and lawful for one man to do cannot furnish the foundation for an action in favor of another. Nor can the absence of commendable motive on the part of the party exercising his rights be the legal substitute or equivalent for the thing amiss which is one of the necessary elements of a wrong. An act which does not amount to a legal injury cannot be actionable because it is done with a bad intent." Again, in American & English Encyclopedia of Law (2d Ed.), vol. 8, p. 695, the doctrine is thus stated: "Applying this principle, it may be stated as a general proposition that every man has a right to the natural use and enjoyment of his own property, and if while lawfully in such use and enjoyment, without negligence or malice on his part, an unavoidable loss occurs to his neighbor, it is 'damnum absque injuria,' for the rightful use of one's own property may cause damage to another without any legal wrong." Applying this doctrine to the case before us, our conclusion is that, on the undisputed evidence, the trial court should have rendered judgment in favor of the defendant.

In respect to legal responsibility to a third person, there is, we think, a distinction to be drawn between an active and a passive use in the enjoyment of one's property rights. To illustrate: If, in the present case, the fire hose had been laid from the hydrant, across the tracks of the defendant, to the fire, and the defendant's servants, with knowledge of the existing conditions as to the fire

and the laying of the hose, had willfully or negligently run the train of cars over the hose, destroying it, and thereby prevented the extinguishing of the fire, a legal liability for such conduct would have arisen. That would have been an active use of one's property in violation of the maxim, "Sic utere tuo ut alienum non laedas." On the other hand, if (as was the case here) the defendant's train of cars was already rightfully standing on its tracks intervening the hydrant and the plaintiff's burning house, and the defendant merely failed or refused to promptly move its train out of the way when requested so to do, in order that the hose might be laid across its tracks, there would be no case for the application of the above-quoted legal maxim. In the latter instance the use would be merely passive. The law imposes no duty on one man to aid another in the preservation of the latter's property, but only the duty not to injure another's property in the use of his own.

In the case of American Sheet & Tin Plate Co. v. Pittsburg & L. E. Ry. Co., 143 Fed. 789, 75 C. C. A. 47, 12 L. R. A. (N. S.) 382, cited and relied on by counsel for appellees, the facts are different from those in the case at bar. In that case the train of cars rested across a street crossing where the firemen wished to lay a hose to reach the fire. It is true it is stated that the street had been abandoned as such, by the city, but it was maintained as a crossing by the company. The case, we think, when properly understood, is not opposed to the views we have expressed. Moreover, it was decided in that case that the railroad company was not liable.

Other cases cited by counsel are different, in their facts, from the case at bar, and are easily to be differentiated in principle.

The judgment appealed from will be reversed, and one here rendered in favor of the defendant.

Reversed and rendered.

NOTE—*Private Necessity of a Third Person as Restriction Upon One's Use of His Own Property.*—The remarks of the principal case upon the maxim, *"sic utere tuo ut alienum non laedas,"* and the excerpt in the opinion from Cooley on Torts seem to us not altogether happy. To us there seems a better statement, as governing the judgment, or which ought to have governed the judgment of the Alabama court found in the American Sheet & Tin Plate Co. case referred to. Judge Gray in that case said: "It is not denied that a natural person or a corporation, by its corporate agencies, may so interfere with the rights of another, growing out of the emergency of a fire or conflagration of or on such other person's property or premises as to make him or it liable for injury and damage directly resulting from such damage. Actionable interference of this kind is the violation of a fundamental social duty, and is within the definition of a common law tort. Private property may be entered by the public authorities, or by the person, or his agents, who is owner of a burning property, for the purpose of using reasonable means to save the same or extinguish the fire, and undoubtedly in the case before us, the plaintiff's employees, as well as the public firemen, had the right to cross the right of way and tracks of the defendant company for the purpose of leading the hose from the source of supply to the burning buildings. In such a case the exclusive control of private property is subordinate to the exigencies of public safety and private necessity and legal sanction is given in such a case to the requirements of morality and social duty. That right, however, is not in question here." Then the facts of the case are discussed to show why these principles did not apply. But in the principal case a dissenting opinion of one of the judges supplements the statement of facts by showing there was testimony from which the inference might have been drawn that there was unnecessary delay after full notice of the fire. In Crissey & F. Lumber Co. v. Denver & R. G. R. Co., 17 Colo. App. 275, 68 Pac. 670, the defendant prevented and deterred firemen from extinguishing a fire in plaintiff's buildings by failing to remove a carload of powder in close proximity thereto, this being practicable when the fire first broke out and its remaining there exposing the firemen to imminent danger of life and limb. A declaration alleging these facts was held good on demurrer. In Clark v. Grand Trunk Ry. Co., 112 N. W. 1121, the Michigan supreme court held in the case of a freight train running over and cutting a fire hose, that "if the evidence should satisfy the jury that there was no other and efficient way to procure water to extinguish the fire, the hose was rightfully across the track, and if defendant's servants in charge of the freight train had notice and warning of the hose on the track and had no occasion for haste and might have stopped the train, and such cutting of the hose occasioned such delay in procuring water that the destruction of plaintiff's property was the direct and necessary result of such cutting," plaintiff might recover, etc. It is perceived that there was full recognition of defendant's rights to use its property in its own interest, though damage should result, but there must be some consideration paid to the private necessity of a third person when this involved no substantial injury to its own rights. See also Little Rock Traction Co. v. McCaskill, 75 Ark. 133, 86 S. W. 997, 70 L. R. A. 680, 112 Am. St. Rep. 48. The language used in the Clark case appears to be a reproduction of that in Metallic Compression Co. v. Fitchburg R. Co., 109 Mass. 277, 12 Am. Rep. 689. The Massachusetts court in that case thought that time ought to have been given to uncouple the hose and then proceed with the train, but the court in the principal case seemed to consider that the train could wait for a clearance signal all the time it wished without regard to the necessity of any third party.

We have canvassed the cases on this subject quite fully, but do not find any such comprehensive statement of the rule as that by Judge Gray in the Tin Plate case. That may be some-

what broad, but still we think it more nearly right even than the Michigan and Massachusetts cases, and perhaps it may be that if the facts of a case demanded those courts would extend the principle beyond what the needs of the cases before the court required.

An Illinois case held that blocking a street with cars so that engines could not conveniently get to a fire was proximate cause in making the railroad liable, but that case turned, or appeared to turn, on the railroad's violation of an ordinance forbidding the blockading of streets, and the controversy was whether or not such blockading might have reasonably been foreseen to interfere with firemen in a large city. The court held that such result ought reasonably to have been anticipated. Houren v. Chicago R. R., 236 Ill. 620, 86 N. E. 611.

We believe Judge Gray's statement is measurably true, and that the doctrine of *damnum absque injuria* was pushed to an unreasonable limit in the principal case. Especially should this be so thought as to such a thing as a railroad in its occupation of streets and highways. The public allows such use in some sort of moderation and not so that it may be destructive of the rights of others.

JETSAM AND FLOTSAM.

ENGLISH EFFORTS FOR THE "DECENTRALIZATION OF JUSTICE."

Many cities of England other than London are asking to be taken out of what is known as the circuit system. It appears that great cities like Liverpool, Manchester and Birmingham are crying out for "a constant flow of justice," which possibly may be something very different from a constant sitting of courts. But whether it is or not, it is the latter that is hoped for as a possibility of the former.

A deputation recently waited on the Lord Chancellor, who expressed himself as deeply impressed with what was said, and one of the speakers spoke in a way which explains somewhat the change in the old conditions, which the circuit system may more nearly have satisfied:

Mr. W. C. Thorne (president of the Liverpool Law Society), in the course of his observations, said: What is the state of business to-day as compared with the state of business fifty or sixty years ago? At that time offer and acceptance to America was a matter of five or six weeks, and now offer and acceptance to America is merely a matter of a couple of hours. Has the law moved with anything like the rapidity that commerce has moved? You hear every day of commercial men wanting to close their accounts and ascertain how they stand on a particular venture, but there may be an outstanding disputed claim which prevents this being done. On consulting a solicitor the merchant is told that the question cannot be decided for about three or four months. Then the solicitor is asked what can be done. He will say: "Well, your case is a good one; if you want to close your books in a fortnight, I may be able to effect a 70 or 80 per cent settlement for you." Such delay may cause the loss of that very considerable percentage, and the other party is alive to the value of this delay. That is what we complain of in Lancashire to-day. * * * There is a need in a great commercial community to have certainty in these matters. A man who is a witness or a juryman or a litigant in the courts at Manchester or at Liverpool wants to know when he is going to get out of the courts, as there are other things he has to do before going to his dinner. A solicitor may be asked by his client, "Can I make an appointment for half-past four or five o'clock?" The solicitor replies, "I cannot tell you, because the judge may sit till seven or eight o'clock." That is not a satisfactory position for a solicitor to be put into when a client asks him a question of that sort. * * * I would draw your lordship's attention to the announcement not infrequently made towards the end of an assize that "all the remaining cases are in the list, and may be taken in either court." When those cases come on and there is a rush, and everything is higgledy-piggledy, can you say that that conduces to the dignity and the proper conduct of justice in His Majesty's courts? Several of those present to-day have had experience of having to run hither and thither; and what is the feeling of the litigant? A defendant on one of these last days of the assizes is beaten in ten minutes before the judge—and very likely rightly beaten—but he does not go away with that impression, but says, "I have been kicked out of court." There is very little chance of that gentleman trying another case, if he can possibly avoid it.

BUCKRAM OR SHEEP BINDING FOR LAW BOOKS.

The problem of binding is, or has been, a hard one for the law librarian to solve, but at the present time there seems to be a ray of light ahead.

At the second annual meeting of the American Association of Law Libraries, held at Asheville, N. C., May 24-28, 1907, a resolution was adopted requesting the publishers of various reports, digests, statutes, etc., to bind a sufficient number of copies of their publication in the buckram or cloth binding to supply the libraries preferring that kind of binding. In accordance with this resolution a committee on binding was appointed, and the report rendered at the third annual meeting, held at Minnetonka, Minn., June 22-27, 1908, is as follows:

'The following reports can now be obtained in cloth binding:

United States Interstate Commerce Commission.

United States Circuit Court of Appeals Reports.

United States Supreme Court Reports.

Alaska,
Arkansas,
California,
California Appeals,
Colorado,
Connecticut,
District of Columbia,
Georgia,
Georgia Appeals,
Illinois,
Illinois Appellate,
Illinois Circuit,
Iowa.
Kansas,
Kentucky,
Louisiana,
New Jersey Equity,
New York Appellate,
New York Civil Procedure,
New York Appeals,
New York Criminal,
New York Miscellaneous,
North Carolina,
Ohio State,
Ohio Circuit N. S.
Ohio Circuits,
Ohio Nisi Prius,
Oregon,
Pennsylvania,

Massachusetts,	Pennsylvania Superior,
Michigan,	Porto Rico,
Minnesota,	Texas,
Mississippi,	Texas Civil Appeals,
Missouri,	Texas Criminal Appeals,
Montana,	Utah,
New Jersey Law,	Virginia,
	Wisconsin."

This report is very gratifying, inasmuch as it shows that we can now continue 47 sets of reports in the buckram or cloth binding.

Publishers generally and the majority of law librarians have realized the superior qualities of the buckram binding, and the reason it has not been used more extensively by publishers is due to two causes. First, it is difficult to persuade the lawyers who have built up a library of sheep-bound books to buy them in any other material. As a rule the young lawyers are more easily convinced.

The second objection is the various grades and colors of buckram that have been used. We can all go to our shelves and pick out books bound in light yellow, dark yellow, grey, brown and even red. What we need now is to have the publishers agree on a standard grade of buckram in a color that will correspond as nearly as possible with our sheep-bound books.

The best sheep-bound books rarely last over seven years, whereas the buckram-bound book lasts indefinitely. Owing to the extremely large bills for rebinding, which have been a continual drain on the law libraries during the last few years, the American Association of Law Libraries felt it their duty to take some action in this matter, and in inducing so many publishers to use the buckram binding, they have conferred a favor not only upon all the law libraries, but upon the entire legal profession.

H. L. BUTLER, Librarian.
AMERICAN LAW LIBRARY,
New York City.

WAGE-EARNERS AS A CLASS.

In Massie v. Cessna, in the Supreme Court of Illinois (April, 1909, 88 N. E. 153), there was considered the constitutionality of a statute containing, among others, the following provisions:

"Section 1. No assignment of the wages or salary of any person shall be valid, so as to vest in the assignee any beneficial interest, either at law or in equity, unless such assignment shall be in writing, signed by the assignor and acknowledged in person by the assignor before a justice of the peace in and for the township in which the assignor resides, and entered by such justice upon his docket, and unless within three days from the date of the execution and acknowledgment of such assignment a true and complete copy of said assignment and of the certificate of its acknowledgment shall be served upon the person, firm or corporation from whom such wages or salary is due or is to become due, in the same manner that the summons in chancery is now required by law to be served: Provided, further, that no assignment of wages or salary by a married person shall be valid unless the same is also executed and acknowledged, as above, by the assignor's wife or husband, as the case may be. * * *

"Section 3. Whenever any assignment of the wages or salary of any person or persons shall be given as security for a loan tainted with usury, or shall be given to secure the payment or fulfillment of the usurious contract, or the payment of the principal or the interest of a usurious debt, such assignment shall be absolutely void."

The law is held void because of undue discrimination in avoiding an assignment of wages or salary given as security for a loan tainted with usury, while making no similar provision with reference to other instruments or conveyances given to secure usurious debts.

It is also held void because it applies both to "salaries" as well as "wages," the court arguing that in the state of Illinois salaries running from $5,000 to $20,000 per annum are not unusual, and that plainly there could be no reason for the protection of persons receiving such large incomes. The most interesting feature of the opinion is the following, which would imply that wage-earners constitute a particular class that might constitutionally be given the protection of such a law:

"This statute, in so far as it would tend to make effective the right of the wage-earner to receive the full benefit of the wages earned by him, is like unto the statute which prefers laborers' and servants' claims in certain instances, like unto the statute which provides that no personal property shall be exempt from execution issued for the collection of the wages of any laborer or servant, and like unto the statute which provides that in a suit brought by 'a mechanic, artisan, miner, laborer, or servant or employee' for his or her 'wages' earned and due, the plaintiff may under certain conditions recover in addition to the wages an attorney's fee for the prosecution of the suit. It is to be observed that these statutes all pertain to wages, and not salaries. The statute last above referred to is the Act of June 1, 1889 (Hurd's Rev. St., 1908, p. 192, chap. 13, sec. 13). Its validity has been assailed upon the ground that it is special legislation, conferring a right upon persons therein specified to attorney's fees that was not given to other persons, but this court held that the enumeration, which is broad enough to include all wage-earners and which includes none but wage-earners, is an enumeration of persons composing a class, upon which the right given by the statute might be conferred without violation of the constitution. Vogel v. Pekoc, 157 Ill. 339, 42 N. E. 386, 30 L. R. A. 491. We have recently referred to that case with approval. Manowsky v. Stephan, 233 Ill. 409, 84 N. E. 365. The reasoning of the Vogel case would seem to lead to the conclusion that wage-earners are the proper objects of legislation which would tend to protect them from the evil which this statute is designed to obviate. Such an act would not be rendered invalid by the fact that it placed reasonable regulations upon the right to assign wages to secure an indebtedness and prescribed a reasonable method to be pursued in making the assignment effective. It has been recently so held by the supreme court of Massachusetts in reference to the sections of a statute regulating the assignment of 'wages.' Mutual Loan Co. v. Martell, filed January 6, 1909, 200 Mass. 482, 86 N. E. 916. It is true that many persons who are salaried receive compensation not greater in amount, by the month or year, than the compensation received by many wage-earners. Whether a statute protecting a salary not greater in amount than a certain sum per week or month, or protecting a portion of a salary which portion is not greater than a certain sum per month or week, would be valid, is a question not here presented."—New York Law Journal.

BOOK REVIEWS.

SEDGWICK'S ELEMENTS OF THE LAW OF DAMAGES. 2d EDITION.

This book was never intended as an abridgement of "Sedgwick on Damages," so well-known to the profession. While it is a handbook for students, the book is also of practical use to the practitioner. It has been considerably enlarged over the first edition appearing in 1895, and much in substantial law, doubtful at that date, has been cleared up. The field covered is of what relates to contracts as well as torts, and the present citation of authority is more of cases arising since the first edition appeared than then existent. While the plan of the former edition is preserved, there is therefore some addition and osme change in text where former doubts have been cleared up. Just as Professor Beale's Cases in Damages accompanied the first edition, so a second edition of such cases has been prepared by him, which is in accord with the development of law shown by comparing the two editions of this author's work on this subject.

This book is in one volume of 370 pages, bound in buckram and published by Little, Brown & Co., Boston, Mass.

BOOKS RECEIVED.

The Law of Personal Injuries on Railroads. By Edw. J. White, Author of "Mines and Mining Remedies," "Personal Injuries in Mines," editor third edition "Tiedeman on Real Property," etc. In two volumes, Vol. I. Injuries to Employees. Vol. II. Injuries to Passengers, Licensees and Trespassers. Published by The F. H. Thomas Law Book Co., St. Louis, Mo. Price, $13.00. Review will follow.

Cyclopedia of Law and Procedure. William Mack, LL. D., Editor-in-Chief. Volume 31. New York. The American Law Book Company. London, Butterworth & Co., 12 Bell Yard. 1909. Review will follow.

The Power of Eminent Domain. A Treatise on the Constitutional Principles Which Affect the Taking of Property for Public Use. By Philip Nichols, Late Assistant Corporation Counsel of the City of Boston. Author of "The Law of Land Damages in Massachusetts." Boston, Boston Book Co. 1909. Price, $5.00. Review will follow.

The Law and Practice in Bankruptcy under the National Bankruptcy Act of 1898, by Wm. Miller Collier. Fourth edition by William H. Hotchkiss. Seventh Edition Revised and Enlarged with Amendments and Decisions to Date, by Frank B. Gilbert, of the Albany Bar. Editor of Street Railways Reports, Annotated; Joint Author of Commercial Paper, etc. Albany, N. Y. Matthew Bender & Company. 1909. Price, $7.50. Review will follow.

The Law of Church and Grave. The Clergyman's Handbook of Law. By Charles M. Scanlan, LL. B., Author of "Scanlan's Rules of Order," "Law of Fraternities," "Law of Hotels," etc. New York, Cincinnati, Chicago. Benziger Brothers. 1909. Price, $1.35. Review will follow.

An Elementary Treatise on the Common Law, for the Use of Students. By Henry T. Terry, Counselor at Law, Professor of Law in the Imperial University of Tokyo, Author of "First Principles of Law" and "Leading Principles of Anglo-American Law." Second Edition, Revised. Published by The Maruzen-Kabushiki-Kaisha. (Z. P. Maruya & Co., Ltd.) Tokyo. 1909. Review will follow.

Report of the Thirty-first Annual Meeting of the American Bar Association. Held at Seattle, Washington, August 25, 26, 27 and 28, 1908. Baltimore. The Lord Baltimore Press. 1908.

HUMOR OF THE LAW.

It is said that in Richmond great rivalry exists between two colored janitors, one of one of the high courts of justice and the other of an institution of which it is expected that the Supreme Court of the United States will shortly say wheher it is a court or not. The janitor of the latter approached the janitor of the former soms days ago, and with great pride informed him that two of the biggest lawyers of the State had been argyfying for two days before his cote," and he proceeded as follows:

"Nigger, you ain't got no talkin' in yo' cote like dat as in ourn. We had de Gineral of de State on' one of de big bugs argufyin' befo' our cote from ten o'clock in de mawnin' tell late at night. You never hearn no such argument in yo' cote nor any other cote. De way dey 'splained things an' argued things an' talked back, fust at one an' den at de other is outen all kin' o' character, an' dey gwine on again termorrer. You don' have nothin' like dat in yo' cote."

"Well," said the other janitor, "What wuz dey argufyin' erbout?"

"Humph! Dey ain't neider of 'em say yit."

Governor Vardaman, of Mississippi, tells an amusing instance of the negro's attitude toward matrimony.

A darky clergyman in the State named had married two negroes; and after the ceremony the groom asked, "How much yo' charge fo' dis?"

"I usually leave that to the groom," was the reply. "Sometimes I am paid five dollars, sometimes ten, sometimes less."

"Five dollahs is a lot o' money, pahson," said the groom. "Ah'll give yo' two dollahs, an den ef ah finds ah ain't got cheated, ah'll give yo mo' in a monf.'

In the stipulated time the groom returned. "Pahson," said he, "dis here arrangement's kind o' spec'lashun, an' ah reckon youse got de worst of it. Ah figgers that yo' owes me a dollah an' seventy-five cents."—Harper's Weekly.

"Doin' any good?" asked the curious individual on the bridge.

"Any good?" answered the fisherman, in the creek below. "Why, I caught forty bass out o' here yesterday."

"Say, do you know who I am?" asked the man on the bridge.

The fisherman replied that he did not.

"Well, I am the county fish and game warden."

The angler, after a moment's thought, exclaimed, "Say, do you know who I am?"

"No," the officer replied.

"Well, I'm the biggest liar in Eastern Indiana," said the crafty angler, with a grin.

WEEKLY DIGEST.

Weekly Digest of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort and of all the Federal Courts.

1. **Accident Insurance**—Construction.—The language of the conditions in an accident insurance policy is to be construed most favorably to the insured.—Hughes v. Central Accident Ins. Co., Pa., 71 Atl. 923.

2. ——Immediate Notice.—Provision of accident policy requiring immediate notice of accident means within a reasonable time after the accident.—Hughes v. Central Accident Ins. Co., Pa., 71 Atl. 923.

3.——Proofs of Loss.—An unqualified refusal by an insurance company to pay a loss, based on facts within the company's knowledge held a waiver thereof.—Hughes v. Central Accident Ins. Co., Pa., 71 Atl. 923.

4.——Time for Bringing Action.—A provision of an accident policy that no action thereon shall be brought until three months after receipt of proofs of death at the home office of the company is waived by the insurer's denial of liability.—Dupue v. Travelers' Ins. Co., U. S. C. C., E. D. Pa., 166 Fed. 183.

5. **Aliens**—Chinese Persons.—Under commerce and labor rule 9, where Chinese persons were apprehended on their attempt to enter the country from Canada, and were ordered deported, an inspector had no jurisdiction to return them to China, and should return them to Canada.—Lui Lum v. United States, U. S. C. C. of App., Third Circuit, 166 Fed. 106.

6. **Appeal and Error**—Disposition of Cause on Appeal.—Where, in an action against several defendants, the evidence was legally insufficient to authorize a recovery against some of the defendants, but sufficient to authorize a recovery against one, and the court rendered judgment for all defendants, the judgment must be reversed, and the cause remanded for a new trial.—Willner v. Silverman, Md., 71 Atl. 962.

7.——Review of Verdict.—The Circuit Court of Appeals has no power to interfere with the verdict of a jury determining questions of fact as to negligence, contributory negligence, and proximate cause, even if it believed the verdict is erroneous.—Pittsburg Rys. Co. v. Sullivan, U. S. C. C. of App., Third Circuit, 166 Fed. 749.

8. **Assignments**—Rights Passing as Incidents.—Claims of laborers for wages are assignable, and an assignment thereof carries the right to a lien given to such claims by a state statute, where the money to pay the same was advanced to the laborers themselves in reliance on such lien and not on the credit of the employer.—Union Trust Co. v. Southern Sawmills & Lumber Co., U. S. C. C. of App., Fourth Circuit, 166 Fed. 193.

9. **Associations**—Right to Form.—Employers may combine in associations for lawful purposes, but must employ lawful methods for the attainment of such purposes.—Willner v. Silverman, Md., 71 Atl. 962.

10. **Attorney and Client**—Disbarment.—A proceeding on information in the name of the state for disbarment of an attorney under Code 1896, sec. 590, subd. 6, and Acts. 1900-1, p. 2227, sec. 1, making it unlawful for an attorney at law to wrongfully encourage litigation, while not strictly criminal, is quasi criminal.—State v. Quarles, Ala., 48 So. 499.

11. **Bail**—Right to Bail.—Where it appears that continued confinement will likely cause the disease from which a prisoner charged with a capital offense is suffering to terminate fatally, he should be released on bail.—Ex parte Smith, Ok., 99 Pac. 893.

12. **Bankruptcy**—Claims.—A bankrupt's trustee held not entitled to present a claim for damages for unlawful taking of the premises by the receiver and trustee until the claim has been liquidated as required by Bankr. Act July 1, 1898, c. 541, sec. 63b, 30 Stat. 562 (U. S. Comp. St. 1901, p. 3447.)—In re Rubel, U. S. D. C., E. D. Wis., 166 Fed. 131.

13.——Continuance of Bankrupt's Business.—A referee in bankruptcy should not continue the bankrupt's business without the court's authority where the transaction is one of magnitude, nor issue trustees' certificates for that purpose in any case.—Bray v. Johnson, U. S. C. C. of App., Fourth Circuit, 166 Fed. 57.

14.——Fraudulent Transfer of Property.—A bill to set aside an alleged fraudulent transfer of property by an insolvent debtor may be maintained in the name of a trustee in bankruptcy.—Exchange Nat. Bank of Montgomery v. Stewart, Ala., 48 So. 487.

15.——Indebtedness.—Where a bankrupt did not apply for a discharge, a judgment subsequently perfected on a claim provable in such proceedings was not a new debt which could form the basis of a subsequent proceeding in bankruptcy.—In re Schnabel, U. S. D. C., E. D. N. Y., 166 Fed. 383.

16.——Involuntary Proceedings.—The failure of a petition in involuntary bankruptcy to allege that the defendant is not a wage-earner nor a person engaged chiefly in farming or the tillage of the soil is not jurisdictional, and the petitioners should be permitted to supply the omission by amendment.—Conway v. German, U. S. C. C. of App., Fourth Circuit, 166 Fed. 67.

17.——Order to Surrender Property.—An order finding that a bankrupt had concealed merchandise of a specified value, without more specifically describing and locating it, held insufficient to justify an order for delivery to the trustee under penalty of commitment for contempt.—In re Rogowski, U. S. D. C., N. D. Ga., 166 Fed. 165.

18.——Possession of Receiver.—Rights of a landlord with reference to a claim for unpaid taxes and water rents by the bankrupt tenant must be adjudicated on proof before the referee, and are not chargeable against the receiver's cost of maintenance.—In re Youdelman-Walsh Foundry Co., U. S. D. C., E. D. N. Y., 166 Fed. 381.

19.——Priority of Claims.—Expenditures made by a receiver appointed in a creditors' suit against an insolvent private corporation for betterments on its property held not entitled to be paid from the proceeds of the corpus of the property in preference to the mortgage creditors.—Union Trust Co. v. Southern Sawmills & Lumber Co., U. S. C. C. of App., Fourth Circuit, 166 Fed. 193.

20.——Provable Claims.—A bankrupt's liability to his father on a written instrument held contingent, and not a provable claim under Bankr. Act c. 541, sec. 63a (1).—In re Hartman, U. S. D. C., M. D. Penn., 166 Fed. 776.

21.——Transfer of Property.—Set-off of a deposit account against a bankrupt's indebtedness to a bank on a note held not a transfer of property within Bankr. Act July 1, 1898, c. 541, sec. 1, subd. 25, 30 Stat. 545 (U. S. Comp. St. 1901, p. 3420).—Booth v. Prete, Conn., 71 Atl. 938.

22. **Bills and Notes**—Bank Check.—A bank, the payee of check, may look to the drawer for its collection, and is not required to apply money in its hands on deposit in the name of an indorser in payment thereof.—Camas Prairie State Bank v. Newman, Idaho, 99 Pac. 833.

23.——Consideration.—An agreement by an indorser of notes waiving any defense to such notes or renewals thereof does not estop him from setting up the defense that they were given for an illegal consideration.—In re Lawrence, U. S. C. C. of App., Second Circuit, 166 Fed. 239.

24.——Indorsement.—An accommodation indorsement of notes held not enforceable where it was made in reliance on the responsibility of a prior indorser whom the payee knew to be insolvent, but concealed such fact from the second indorser.—In re Lawrence, U. S. C. C. of App., Second Circuit, 166 Fed. 239.

25. **Carriers**—Assault by Carrier Servant.—A carrier is absolutely liable as an insurer for the protection of passengers against assaults and insults at the hands of its servants, unless the passenger alone is the cause of the trouble.—Rohrback v. Pullman's Palace Car Co., U. S. C. C., E. D. Penn., 166 Fed. 797.

26.——Carriage of Live Stock.—Failure of a railroad company to provide unloading stations, congested traffic conditions reasonably to be anticipated from past experience, and breakdowns en route resulting from negligent operation or omission to furnish properly equipped and inspected engines and cars are not such accidental or unavoidable causes as will relieve the carrier from liability for a violation of Act June 29, 1906, c. 3594, 34 Stat. 607 (U. S. Comp. St. Supp. 1907, p. 918).—United States v. Atchison, T. & S. F. Ry. Co., U. S. D. C., N. D. Ill., 166 Fed. 160.

27.——Injuries to Persons at Station.—A railroad is liable to a person upon its premises to meet an incoming passenger for injuries due to the defective condition of the station platform.—Atchison, T. & S. F. Ry. Co. v. Cogswell, Ok., 99 Pac. 923.

28.——Refusal to Furnish Refrigerator Cars.—Carrier held liable for damages caused by its refusal to furnish refrigerator cars in which to transport plaintiff's vegetables on reasonable demand.—Atlantic Coast Line R. Co. v. Geraty, U. S. C. C. of App., Fourth Circuit, 166 Fed. 10.

29.——Recovery of Overcharge.—It is not a bar, to an action by a shipper to recover an overcharge, that the rate agreed upon had not been established as required by law.—Kansas City Southern Ry. Co. v. C. H. Albers Commission Co., Kan., 99 Pac. 819.

30.——Tender of Freight.—Where it was the duty of a carrier to furnish refrigerator cars for the transportation of cabbage, and it refused to do so, plaintiff was not required to harvest and tender the cabbage in order to recover the value thereof.—Atlantic Coast Line R. Co. v. Geraty, U. S. C. C. of App., Fourth Circuit, 166 Fed. 10.

31. **Conspiracy**—Strikes.—Striking workmen may not coerce third persons, not directly concerned in the strike, into refusing to buy or use the products of their late employer any more than he may lawfully coerce third persons into refusing them shelter or food, but the only means of injuring each other which are lawful in such a contest are those that operate directly and immediately upon the control and supply of work to be done and of labor to do it.—Iron Molders' Union No. 125 of Milwaukee, Wis., v. Allis-Chalmers Co., U. S. C. C. of App., Seventh Circuit, 166 Fed. 45.

32. **Constitutional Law**—Amendments.—Under Const. art. 6, sec. 2, and art. 20, sec. 1, a majority of the electors held required to the adoption of an amendment to the Constitution, and not only a majority of those actually voting.—State v. Brooks, Wyo., 99 Pac. 874.

33.——Freedom to Contract.—When an individual intends to perpetrate a fraud, he passes over the line respecting free right to contract, and the Legislature may make his act a crime.—Bailey v. State, Ala., 48 So. 498.

34.——Prescribing Rates for Public Service Corporations.—The prescribing of rates for a public service corporation, or one affected with a public interest, is a legislative, and not a judicial function.—Gulf Compress Co. v. Harris, Cortner & Co., Ala., 48 So. 477.

35.——Use of Public Property.—The temporary and casual use of unused public property for public entertainments to avoid loss of revenue on such unused property, and thereby lighten the general burden of taxation, held not an invasion of the rights of citizens engaged in the business of entertaining, depriving them of property without due process of law.—Gottlieb-Knabe & Co., of Baltimore City v. Macklin, Md., 71 Atl. 949.

36. **Contracts**—Validity.—Under Pen. Code N. Y., sec. 125, defining the compounding of a crime, notes given by an employee for money embezzled from his employer, and signed by an indorser on an understanding with the payee that the principal would not be prosecuted, are in part for an illegal consideration, and, as against the indorser are void.—In re Lawrence, U. S. C. C. of App., Second Circuit, 166 Fed. 239.

37.——Violation of Statute.—When statutory conditions for the conduct of a business or profession are not complied with, agreements made in the course of the business are void if the conditions are made for the benefit of the public, but valid if no specific penalty is imposed and the condition is for administrative purposes, as for revenue.—Sunflower Lumber Co. v. Turner Supply Co., Ala., 48 So. 510.

38. **Corporations**—Actions Against Foreign Corporations.—At common law, a state court cannot by any method acquire jurisdiction to render a personal judgment against a foreign corporation.—Swarts v. Christie Grain & Stock Co., U. S. C. C., W. D. Mo., 166 Fed. 338.

39.——Action Against Stockholder.—A stockholder cannot set off stock which he may hold against a debt owing the corporation.—Hammond v. A. Vetsburg Co., Fla., 48 So. 419.

40.——Conspiracy.—A corporation cannot conspire that its own directors shall be unfaithful to it.—Pennsylvania Sugar Refining Co. v. American Sugar Refining Co., U. S. C. C. of App., Second Circuit, 166 Fed. 254.

41.——Doing Business in Foreign State.—A manufacturing corporation of another state, which maintains a selling agent in New York, with authority to make binding contracts for the sale of its goods, merely sending to it directions where to ship, is doing business in New York, and is subject to suit in that state.—Irons v. Simeon L. & George H. Rogers, U. S. C. C., S. D. N. Y., 166 Fed. 781.

42.——Duty of Directors.—Under Mills' Ann. St. Colo., sec. 481, a contract by which a stockholder employed a director in a corporation to look after her interests held against public policy in so far as it required the director to act for such stockholders, regardless of his duty to represent the minority stockholders.—Singers-Bigger v. Young, U. S. C. C. of App., Eighth Circuit, 166 Fed. 82.

43.——Foreign Corporations.—In the absence of any statute a foreign corporation is, under the doctrine of comity, privileged to do business in the state, but the state may prescribe the conditions on which a foreign corporation may do business.—State v. Nichols, Wash., 99 Pac. 876.

44.——Liability of Stockholder.—A stockholder, not being personally liable on corporate contract, held not bound by representations made by the corporation so as to prevent her from denying an easement in property.—Falls City Lumber Co. v. Watkins, Ok., 99 Pac. 884.

45.——Misconduct of Directors.—Action of directors in the name of their corporation, detrimental to its interests and in bad faith, is, with respect to them, the act of the corporation in name only.—Pennsylvania Sugar Refining Co. v. American Sugar Refining Co., U. S. C. C. of App., Second Circuit, 166 Fed. 254.

46.——Right to Do Business.—Under Sess. Laws, 1903, p. 124, c. 84, when considered in the light of Const. art. 12, sec. 7, a foreign corporation bearing the name of an existing domestic corporation held not entitled to a certificate to do business in the state by complying with Ballinger's Ann. Codes & St., secs. 4291-4293 (Pierce's Code, secs. 7214-7216).—State v. Nichols, Wash., 99 Pac. 876.

47.——Service of Process.—The requirements of a state law as to service of process must be

followed strictly to give jurisdiction to render a personal judgment against a foreign corporation.—Swarts v. Christie Grain & Stock Co., U. S. C. C., W. D. Mo., 166 Fed. 338.

48.——Ultra Vires.—Except where public rights are involved, ultra vires will not prevail, whether interposed for or against a corporation, if it will not advance justice, but will accomplish a legal wrong.—Wayte v. Red Cross Protective Society, U. S. C. C., E. D. Pa., 166 Fed. 372.

49. **Costs**—Persons Liable.—Where plaintiff obtains judgment on his demand, and defendant on his demand in reconvention, each should pay the costs incurred in obtaining the judgment against him.—Gilly v. Hirsh, La., 48 So. 422.

50. **Covenants**—Words of Grant.—No covenant or assurance of title or right to convey real estate can be implied from the operative words of an instrument reciting that the seller grants, bargains, sells and conveys "the following personal property" including a lumber flume; only personal property being included in the instrument.—Falls City Lumber Co. v. Watkins, Ore., 99 Pac. 884.

51. **Criminal Law**—Federal Courts.—Under Rev. St. U. S., secs. 711, 5456 (U. S. Comp. St. 1901, pp. 577, 3683), a state court has no jurisdiction of an indictment for larceny of money and postage stamps belonging to the United States.—Ex parte Roach, U. S. D. C., N. D. Iowa, 166 Fed. 344.

52. **Criminal Trial**—Province of Court and Jury.—A defendant in a criminal case has the absolute right to require that the jury decide whether or not the evidence sustains each and every material allegations of the indictment, and the judge is without power to charge as matter of law that any such allegation is proved, even where the evidence is clear and uncontradicted.—Konda v. United States, U. S. C. C. of App., Seventh Circuit, 166 Fed. 91.

53. **Damages**—Mortality Tables.—Mortality and annuity tables, while admissible on the question of diminished earning capacity from injuries, are to be considered in connection with all the surrounding circumstances bearing on the question.—Robinson v. Helena Light & Ry. Co., Mont., 99 Pac. 837.

54. **Electricity**—Transmission Along Highways.—Those maintaining electric wires along highways must use a high degree of care commensurate with the danger, to protect persons lawfully using the highways.—Walter v. Baltimore Electric Co., Md., 71 Atl. 953.

55. **Equity**—Jurisdiction.—A court of equity is without jurisdiction of the cause where a plain and adequate remedy at law exists, unless jurisdiction is conferred by statute.—Gulf Compress Co. v. Harris, Cortner & Co., Ala., 48 So. 477.

56.——Jurisdiction.—A court of equity held to have jurisdiction of a suit by a bondholder of a corporation on behalf of himself and all others similarly situated against directors of the corporation for fraud and deceit on the ground of preventing a multiplicity of suits.—Slater Trust Co. v. Randolph-Mason Coal Co., U. S. C. C., S. D. N. Y., 166 Fed. 171.

57.——Remedy at Law.—An action for money had and received against a public warehouseman exacting overcharges for the storage of goods gives a complete and adequate remedy, and a court of equity is without jurisdiction to grant relief.—Gulf Compress Co. v. Harris, Cortner & Co., Ala., 48 So. 477.

58. **Estoppel**—Grounds of Doctrine.—The doctrine of equitable estoppel is based upon the theory that the owner had made some misrepresentation which has misled the other party, and which it would be inequitable to permit him to deny.—Falls City Lumber Co. v. Watkins, Ore., 99 Pac. 884.

59.——Husband and Wife.—A husband joining in and authorizing his wife to mortgage her land so described as to include his land held estopped from contesting the mortgage.—W. F. Taylor Co. v. Sample, La., 48 So. 439.

60. **Evidence**—Handwriting.—While papers not otherwise competent may not be introduced as standards of comparison of handwriting, if introduced for other purposes they may be so used.—Barnes v. United States, U. S. C. C. of App., Fifth Circuit, 166 Fed. 113.

61.——Opinions.—Where a witness is familiar with the particular grade crossing, he may testify that a particular train was running at the usual rate, though he was not an expert.—Bracken v. Pennsylvania R. Co., Pa., 71 Atl. 926.

62.——Records.—A certified copy of a record, by a public officer authorized to make it, not only vouches for its own correctness, but proves prima facie the original to have been in the public office when the copy was made; an officer's certificate being accorded the sanctity of a deposition.—United States v. Brelin, U. S. C. C. of App., Eighth Circuit, 166 Fed. 104.

63.——Res Gestae.—A statement made by plaintiff's fellow servant, 10 minutes prior to an explosion in which the fellow servant was killed and plaintiff was injured, held inadmissible as res gestae.—Klauder-Weldon Dyeing Mach. Co. v. Gagnon, U. S. C. C. of App., Second Circuit, 166 Fed. 286.

64.——Trade Terms.—Where defendants purchased "Geneva washed furnace coke," they were entitled to prove that under a custom of the trade such coke contained not more than 1.32 per cent of sulphur and complied with certain requirements as to friability and size.—McKeefey v. Dimmick, U. S. C. C., E. D. Pa., 166 Fed. 370.

65.——Writings.—Papers found among insured's effects purporting to come from insurer's general agent, with proof of his custom to affix his signature with a rubber stamp, held admissible to show waiver of forfeiture of policy.—Union Cent. Life Ins. Co. v. Washburn, Ala., 48 So. 475.

66. **Executors and Administrators**—Will Contests.—While an executor is a proper party to proceedings to contest the validity of a will, he must defend the will at his own expense, where the contest occurs before the issuance of letters testamentary.—Pleasants v. McKenny, Md., 71 Atl. 955.

67. **Explosives**—Care Required.—A person in possession of dynamite is bound to use the highest degree of care as to third parties, and failure so to do is negligence.—Derry Coal & Coke Co. v. Kerbaugh, Pa., 71 Atl. 915.

68. **False Imprisonment**—Acts Constituting.—An arrest without a warrant of a person found by one clothed with the authority of a police officer in a public place in a state of intoxication, or acting in a disorderly manner, and his detention for the action of the proper police authorities, is not a false arrest, or his detention a false imprisonment.—Erie R. Co. v. Reigherd, U. S. C. C. of App., Sixth Circuit, 166 Fed. 247.

69. **Federal Courts**—Diverse Citizenship.—Where plaintiff, in a suit in the federal courts, was only a nominal party, the record could be amended after trial on the merits so as to show that the suit was to the use of the real party in interest, and by inserting averments concerning his citizenship.—Baglin v. Title Guaranty & Surety Co., U. S. C. C., E. D. Pa., 166 Fed. 356.

70.——Jurisdiction.—A suit by a domestic corporation to restrain the collection of taxes imposed by the state on personal property alleged in the bill to have its situs for purposes of taxation in another state involves a federal question and is within the jurisdiction of a federal court.—Central of Georgia Ry. Co. v. Wright, U. S. C. C., N. D. Ga., 166 Fed. 153.

71.——Jurisdiction to Remove Cloud on Title.—Where federal jurisdiction appears, a bill in a federal equity court may be maintained to remove a cloud on title independent of possession, if possession is not required by local statute.—American Ass'n v. Williams, U. S. C. C. of App., Sixth Circuit, 166 Fed. 17.

72.——Rules of Decisions.—Whether a railroad engineer and his conductor are fellow servants will be determined in the federal courts as a question of general law only in the absence of statutory regulations of the state in which the action arises.—Snipes v. Southern Ry. Co., U. S. C. C. of App., Fourth Circuit, 166 Fed. 1.

73.——Service of Process.—Service on a defendant does not give a federal court jurisdiction, where it is founded only on diversity of citizenship and neither party is a resident of the state, if seasonable objection is made.—Slater Trust Co. v. Randolph-Macon Coal Co., U. S. C. C., S. D. N. Y., 166 Fed. 170.

74. **Fire Insurance**—Proof of Loss.—Where an

insurance policy required written and verified proof of loss, and provided that no representative of the company should have power to waive any condition except in writing indorsed thereon, a parol waiver by an agent not shown to have authority to make it, and whose action was not ratified by the company, does not excuse the failure to make a formal proof of loss, nor entitle the insured to recover where it was not made.—Scottish Union & Nat. Ins. Co. v. Encampment Smelting Co., U. S. C. C. of App., Eighth Circuit, 166 Fed. 231.

75.——Waiver of Conditions.—Insurance company may waive any condition of the policy, unless insured by his act, loses his insurable interest.—Bush v. Hartford Fire Ins. Co., Pa., 71 Atl. 936.

76. **Fraudulent Conveyance**—Burden of Proof.—In an action by a subsequent creditor to recover for a fraudulent conveyance and concealing property, she was bound to prove, not only that the conveyance was fraudulent, but that there was a concealment at the time she became a creditor.—Allen v. Lyness, Conn., 71 Atl. 936.

77.——Levy of Execution.—Property conveyed to defraud subsequent creditors may be levied on by them, regardless of the conveyance, if the grantee participated in the fraud.—Allen v. Lyness, Conn., 71 Atl. 936.

78.——Money.—Money being leviable property, when fradulently disposed of by an insolvent corporation, may be reached by a creditors' suit.—Exchange Nat. Bank of Montgomery v. Stewart, Ala., 48 So. 487.

79. **Guaranty**—When Obligation Arises.—The obligation of guarantor arises only where there is a principal debtor.—Barrett-Hicks Co. v. Glas, Cal., 99 Pac. 856.

80. **Habeas Corpus**—Federal Courts.—Under Rev. St., secs. 751, 752 (U. S. Comp. St. 1901, p. 592), a federal court or judge has jurisdiction on habeas corpus to inquire into the cause of the restraint of one held under process of a state court, and to discharge him if he is held in violation of the Constitution or laws of the United States.—Ex parte Roach, U. S. D. C., N. D. Iowa, 166 Fed. 344.

81. **Highways**—Obstruction—Where, in an action by a private person to enjoin the obstruction of a highway, the facts show a special injury, which is direct, the complaint held sufficient to authorize the maintenance of the action.—Stricker v. Hillis, Idaho, 99 Pac. 831.

82. **Injunction**—Grounds of Relief.—A manufacturing company whose skilled workmen are on a strike has the right to seek the aid of other manufacturers to make or complete its products, and the strikers have the reciprocal right to seek the aid of their fellow workmen in the employ of such other manufacturers to prevent that end, and may lawfully combine and co-operate for that purpose.—Iron Molders' Union No. 125 of Milwaukee, Wis., v. Allis-Chalmers Co., U. S. C. C. of App., Seventh Circuit, 166 Fed. 45.

83.——Protection of Business.—Held, that a merchant next door to an auctioneer would be restrained from placing a card in his windowy reflecting upon auctioneer's business.—Gilly v. Hirsh, La., 48 So. 422.

84.——Strikes.—The right of an employer during a strike of his workmen to persuade, but not coerce, unemployed workmen to accept his employment and terms, is limited and conditioned by the right of the strikers to dissuade, but not restrain, them from so accepting.—Iron Molders' Union No. 125 of Milwaukee, Wis., v. Allis-Chalmers Co., U. S. C. C. of App., Seventh Circuit, 166 Fed. 45.

85. **Interstate Commerce**—Regulation.—A railroad company, by engaging in interstate commerce, does not thereby submit all its business concerns to the regulating power of Congress.—United States v. Erie R. Co., U. S. D. C., D. N. Jer., 166 Fed. 352.

86.——Regulation of Train Equipment.—A train composed of cars, some of which are and some of which are not engaged in interstate commerce, is subject to congressional regulation by the safety appliance acts, being Act March 2, 1893, c. 196, 27 Stat. 531 (U. S. Comp. St. 1901, p. 3174), Act April 1, 1896, c. 87, 29 Stat. 85, and Act March 2, 1903, c. 976, 32 Stat. 943 (U. S. Comp. St. Supp. 1907, p. 885).—United States v. Erie R. Co., U. S. D. C., D. N. Jer., 166 Fed. 352.

87.——Schedule of Rates.—Shippers held not entitled to maintain a bill in equity to prevent the filing or enforcement of a schedule of interstate rates, pending determination of the reasonableness thereof by the Interstate Commerce Commission under interstate commerce act (Act Feb. 4, 1887, c. 104, 24 Stat. 379 (U. S. Comp. St. 1901, p. 3154) as amended by Act June 29, 1906, c. 3591, 34 Stat. 584 (U. S. Comp. St. Supp. 1907, p. 892).—Atlantic Coast Line R. Co. v. Macon Grocery Co., U. S. C. C. of App., Fifth Circuit, 166 Fed. 206.

88.——What Constitutes.—Merchandise consigned from a point in one state to another point in the same state, but passing in transit through another state, constitutes interstate commerce.—United States v. Erie R. Co., U. S. D. C., D. N. Jer., 166 Fed. 352.

89. **Logs and Logging**—Certainty of Contract.—A contract to sell all the pine trees of a designated size on particular tracts of land held certain as to the trees sold.—Kent v. Davis Bros. Lumber Co., La., 48 So. 451.

90. **Mandamus**—Subjects of Relief.—The state can always in mandamus enforce a legal duty created by the authority to which it has entrusted power to create it, and, when it invests a city with power to make orders, it charges those against whom such orders may be directed with the duty of obeying them, and their duty is one of law.—State v. New York, N. H. & H. R. Co., Conn., 71 Atl. 942.

91. **Master and Servant**—Dangerous Structures.—The building and maintenance by a railroad company of a structure so near its track that it is likely to strike a brakeman riding on top of a passing car in the course of his duty is negligence per se, and a trainman does not assume the risk of injury from such structure merely because he knows of its existence and general location.—Chesapeake & O. Ry. Co. v. Cowley, U. S. C. C. of App., Fourth Circuit, 166 Fed. 283.

92. **Mines and Minerals** — Injuries to Real Property.—Owner of mineral held required to mine it so as not to injure the surface, but this applies to the surface only, and not to wells and springs fed by subterranean streams. Sloss-Sheffield Steel & Iron Co. v. Sampson, Ala., 48 So. 493.

93. **Master and Servant**—Injury to Servant.—An instruction that a servant could presume that the master would use ordinary care to "protect" the servant in view of the common meaning of the word held to place too great a burden on the master.—Reino v. Montana Mineral Land Development Co., Mont., 99 Pac. 853.

94.——Res Ipsa Loquitur.—In an action by a mining employee for injuries received by the fall of a bucket down the mine shaft, the rule of res ipsa loquitur held not to apply.—Reino v. Montana Mineral Land Development Co., Mont., 99 Pac. 853.

95. **Mechanics' Liens**—Right to Lien.—A materialman's right to a lien provided for by Code Civ. Pro. Sec. 1183, is not affected because payment of the debt is guaranteed.—Barrett-Hicks Co. v. Glas, Cal., 99 Pac. 856.

96. **Monopolies** — Federal Anti-Trust Statute.—Whether a combination in restraint of foreign commerce is reasonable or unreasonable is immaterial in an action to recover treble damages therefor under the federal anti-trust statute.—Thomsen v. Union Castle Mail S. S. Co., U. S. C. C. of App., Second Circuit, 166 Fed. 251.

97.——Restraint of Trade.—That a combination in restraint of foreign commerce, in violation of federal anti-trust act, was formed in a foreign country, held not material to a right to sue for damages occasioned thereby.—Thomsen v. Union Castle Mail S. S. Co., U. S. C. C. of App., Second Circuit, 166 Fed. 251.

98.——Statutes Governing.—If a contract in restraint of trade only affects products within the state, it is within the state law, but if it seeks to control the disposition of the article across state lines, it is within the federal act.—Pennsylvania Sugar Refining Co. v. American Sugar Refining Co., U. S. C. C. of App., Second Circuit, 166 Fed. 254.

99.——Violation of Anti-Trust Act.—In an

action for damages for violation of the federal anti-trust act, it is not necessary that the complaint should allege an injury to an existing business.—American Banana Co. v. United Fruit Co., U. S. C. C. of App., Second Circuit, 166 Fed. 261.

100. **Mortgages**—Covenants.—A covenant in a mortgage of real estate that the mortgagor is the "owner" is one that he is the absolute owner in fee simple.—Slater Trust Co. v. Randolph-Macon Coal Co., U. S. C. C., S. D. N. Y., 166 Fed. 171.

101.——Res Judicata.—The doctrine of res judicata applies to a mortgage foreclosure proceeding under a power of sale as it does to other judicial proceedings. Felgner's Adm'rs v. Slingluff, Md., 71 Atl. 978.

102. **Negligence**—Proximate Cause.—It is not necessary that the particular injury should have been anticipated as the natural and probable consequence of negligence in order to recover therefor it being sufficient if the consequences were the natural and probable result of the wrongful act.—Reino v. Montana Mineral Land Development Co., Mont., 99 Pac. 853.

103.——Question of Law or Fact.—Negligence and contributory negligence are questions of fact, where uncertainty arises from a conflict in the testimony, or because different inferences might be drawn from undisputed testimony by fair-minded men.—Snipes v. Southern Ry. Co., U. S. C. C. of App., Fourth Circuit, 166 Fed. 1.

104. **Partnership**—Payment of Individual Debt.—Where partner gives firm check for individual debt, the firm held not entitled to plead that member drawing check had no authority so to do.—Camas Prairie State Bank v. Newman, Idaho, 99 Pac. 833.

105.——Profits.—A partner cannot maintain an action for profits against the firm.—Merrill v. Smith, Ala., 48 So. 495.

106. **Patents**—Damages for Infringement.—Where the defendant, on an accounting for profits for infringement, fails or refuses to produce his books on an order of the court, a decree against him may be based on less definite evidence, if it establishes approximately the amount of his sales and profits.—Yesbera v. Hardesty Mfg. Co., U. S. C. C. of App., Sixth Circuit, 166 Fed. 120.

107.——Date of Invention.—The date of a patented invention is at least as early as the date of the application, provided it sufficiently describes the invention to enable those skilled in the art to understand it; such application being conclusive evidence that the invention is perfected and adapted to use, and the equivalent of an actual reduction to practice under the statute.—Automatic Weighing Mach. Co. v. Pneumatic Scale Corp., U. S. C. C. of App., First Circuit, 166 Fed. 288.

108.——Priority.—To overthrow a patent by a foreign one of prior date, the description of the invention must be in such full, clear, and exact terms as to enable one acquainted with the art to which it belongs to make or practice the invention.—Warren Bros. Co. v. City of Owosso, U. S. C. C. of App., Sixth Circuit, 166 Fed. 309.

109.——Priority Between Inventors.—Upon the question of fact whether one who conceived an invention and made drawings and a disclosure to others of the same was reasonably diligent in adapting and perfecting the same, the decision of the patent office tribunals and the Supreme Court of the District of Columbia in interference proceedings to which he was a party is entitled to great weight, if not absolutely controlling in subsequent litigation between the same parties.—Automatic Weighing Mach. Co. v. Pneumatic Scale Corp., U. S. C. C. of App., First Circuit, 166 Fed. 288.

110. **Pleading**—Motion to Strike.—There is a clear difference between the remedies afforded by a motion to strike a pleading and a demurrer, and they should not be used indiscriminately.—Hammond v. A. Vetsburg Co., Fla., 48 So. 419.

111. **Pledges**—Liability of Pledgor.—A mortgagee, to whom an endowment policy was assigned as additional security, should be charged with interest on the amount received on the policy, where he has unnecessarily delayed in its collection.—Felgner's Adm'rs v. Slingluff, Md., 71 Atl. 978.

112. **Principal and Surety**—Building Contractor's Bond.—A surety on a building contractor's bond for the construction of a one-story building was discharged by changes in the plans and by addition of another story, unless he consented thereto.—Barrett-Hicks Co. v. Glas, Cal., 99 Pac. 856.

113. **Railroads**—Accidents at Crossings.—The liability of a railroad company under the statute (Code 1906, Sec. 4043), limiting the speed of trains held to depend on the lawfulness of the speed at the time the danger is discovered, or should have been discovered.—Louisville & N. R. Co. v. Dick, Miss., 48 So. 401.

114.——Fire Set by Locomotive.—Where a building is destroyed by fire, after a locomotive emitting sparks has passed sufficiently near, it will be presumed that the fire was occasioned by the sparks.—Thomason v. Kansas City Southern Ry. Co., La., 48 So. 432.

115.——Passengers.—One in a railroad waiting room waiting for a train on which to take passage held a passenger.—Philadelphia, B. & W. R. Co. v. Green, Md., 71 Atl. 986.

116. **Reformation of Instruments**—Mistake.—The remedy for correction of mistakes in deeds, grants, and other instruments, provided by Act Tenn. Nov. 22, 1809, c. 101 (1 Scott's Revisal, p. 1192), is applicable whether the petitioners are in or out of possession, proprietors with notice adversely affected, including the state, being bound thereby.—American Ass'n v. Williams, U. S. C. C. of App., Sixth Circuit, 166 Fed. 17.

117. **Shipping**—Authority of Master.—Master of a vessel cannot pledge owner's credit, where the owner or his managing agent is so near as to be reasonably expected to intervene in person.—May v. Hurley, N. J., 71 Atl. 913.

118. **Statutes**—Construction.—When a statute prescribing procedure is changed, it must be presumed that the Legislature intended to establish a different rule.—McLean v. Moran, Mont., 99 Pac. 836.

119. **Street Railroads**—Receiving Passengers.—The stopping of a street car, under such circumstances as to indicate that the company is ready to receive passengers, held an invitation, to any one desiring to become a passenger, to enter.—Robinson v. Helena Light & Ry. Co., Mont., 99 Pac. 837.

120. **Territories**—Anti Trust Legislation.—That a prosecution for violation of the terms of a territorial statute against monopolies would also be a violation of and punishable under the federal statutes does not affect its validity.—Territory v. Long Bell Lumber Co., Okl., 99 Pac. 911.

121. **Torts**—Damnum Absque Injuria.—Where a merchant undersells his neighbor, though the latter may suffer damage, it is damnum absque injuria.—Gilly v. Hirsh, La., 48 So. 422.

122.——Malicious Interference With Business.—Any malicious interference by a single individual, or by a number of individuals conspiring together, with the business or occupation of another, followed by damage, is an actionable wrong.—Willner v. Silverman, Md., 71 Atl. 962.

123. **Trade Unions**—Right to Organize.—Employees may combine in unions for lawful purposes, but must employ lawful methods for the attainment of such purposes.—Willner v. Silverman, Md., 71 Atl. 962.

124. **Trial**—Reception of Evidence.—Where evidence introduced by plaintiff is relevant to one of several issues in the case, the fact that such evidence produced the verdict is not alone cause for reversal, unless it is shown that an improper use was made of the evidence, and that the verdict resulted from such improper use.—Kelland v. Jos. W. Noone's Sons Co., N. H., 71 Atl. 947.

125. **Witnesses**—Impeachment.—Where a conversation was called to the attention of a witness, who denied that the conversation took place, proof of the conversation was admissible as impeaching testimony.—Nethery v. Nelson, Wash., 99 Pac. 879.

Central Law Journal.

A LEGAL WEEKLY NEWSPAPER.
Published by

Central Law Journal Company,
420 MARKET STREET, ST. LOUIS, MO.

To whom all communications should be addressed.

Subscription Price, FIVE DOLLARS per annum, in advance. Subscription price, including two binders for holding two volumes, saving the necessity for binding in book form, SIX DOLLARS. Single numbers TWENTY-FIVE CENTS.

Entered at the Post Office, St. Louis, Mo., as second class matter.

NEEDHAM C. COLLIER, EDITOR-IN-CHIEF.
ALEXANDER H. ROBBINS, MANAGING EDITOR.

CONTENTS.